

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PHILLIP MURRY,

Plaintiff

V.

CITY OF NORTH LAS VEGAS POLICE
DEPARTMENT; SGT. MICHAEL
BOOKER; and DOES 1-10, inclusive,

Defendants

Case No.: 2:17-cv-157-APG-CWH

Order (1) Granting in Part Defendants’ Motion for Summary Judgment and (2) Denying Plaintiff’s Objection to Evidence

[ECF Nos. 29, 53]

Plaintiff Phillip Murry sues defendants North Las Vegas Police Department (NLVPD) and NLVPD Sergeant Michael Booker alleging a variety of civil rights violations and torts stemming from an incident in which Booker shot and detained Murry. The defendants move for summary judgment on all of Murry's claims except for his claim for negligence. Murry opposes and objects to an exhibit attached to the defendants' reply.

Genuine issues of material fact remain such that a reasonable jury could find in favor of Murry on Claims 1, 2, 5, 6, 8, and 9 and could find that Booker's actions warrant punitive damages for those claims. I therefore deny the defendants' motion for summary judgment on those claims and on punitive damages. However, Murry does not present evidence sufficient to establish that NLVPD had policies or practices that caused the alleged constitutional violations, so I grant summary judgment to the defendants on Claim 4. And Murry's substantive due process claim fails as a matter of law, so I grant summary judgment to the defendants on Claim 3. I also overrule Murry's objection to evidence.

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1 **I. BACKGROUND**

2 **A. Procedural Summary**

3 Murry filed this civil rights lawsuit seeking compensatory and punitive damages against
4 NLVPD and Booker. He asserts the following claims for relief:

- 5 • Claim 1: Unreasonable Search and Seizure—Search and Seizure Without Reasonable
6 Suspicion or Probable Cause against Booker;
- 7 • Claim 2: Unreasonable Search and Seizure—Excessive Force against Booker;
- 8 • Claim 3: Substantive Due Process against Booker;
- 9 • Claim 4: Municipal Liability for Unconstitutional Custom or Policy against NLVPD;
- 10 • Claim 5: False Arrest/False Imprisonment against NLVPD and Booker;
- 11 • Claim 6: Battery against NLVPD and Booker;
- 12 • Claim 7: Negligence against NLVPD and Booker;
- 13 • Claim 8: Intentional Infliction of Emotional Distress against NLVPD and Booker;
- 14 • Claim 9: Unreasonable Search and Seizure—Excessive Force and Denial of Medical
15 Care against Booker.

16 ECF No. 1. Claims 1, 2, 3, 4, and 9 are federal claims brought under 42 U.S.C. § 1983. Claims
17 5, 6, 7, and 8 are Nevada state law claims. *Id.*

18 The defendants move for summary judgment on all claims except for Claim 7 and on
19 Murry's request for punitive damages. ECF No. 29. Murry opposes the motion and objects to a
20 newspaper article about accidental shootings that the defendants submitted as part of their
21 motion for summary judgment, arguing the article is hearsay. ECF No. 53.

22 **B. Factual Disputes**

23 All of Murry's claims depend on at least one of these three factual allegations: (1) that
Murry's behavior did not warrant a stop and seizure by Booker, (2) that Booker intentionally

1 shot Murry or recklessly discharged his weapon, and (3) that Booker did not provide immediate
2 medical attention to Murry. The defendants dispute each of these allegations.

3 *i. Murry's Behavior Leading Up to Booker's Stop*

4 On the evening of January 2, 2017, NLVPD's SWAT team was activated for a potential
5 hostage rescue near the 2200 block of Statz Street in North Las Vegas. Booker, who was a
6 SWAT Sergeant at the time, was assigned to the back of the residence near 2240 Ellis Street.
7 Booker was in the middle of the street in the driver's seat of a darkly colored armored transport
8 vehicle (a SWAT "bearcat"). He was armed with a 9 mm Glock handgun that was equipped with
9 a tactical flashlight under the barrel. The flashlight had two methods of activation: a switch
10 located on the flashlight and a pressure sensor located directly below the trigger guard. Around
11 12:30 a.m., Murry was driving home in a maroon Toyota. While driving north on Ellis Street, he
12 came upon Booker in the bearcat vehicle. ECF Nos. 1; 29; 41. The remaining events are
13 disputed by the parties.

14 Booker testified that one of his main responsibilities that night was to ensure the safety of
15 the officers involved in the SWAT operation occurring on the other side of the block, and that he
16 placed the bearcat in the middle of the road to prevent vehicles from driving past him and the
17 other officers. ECF No. 29-2 at 60-61 and 64-67. However, elsewhere in his deposition Booker
18 testified that it was not his "goal" to stop traffic on Ellis Street. ECF No. 29-2 at 69. And
19 Lieutenant James Brown, the officer working in the command post at the time, testified that
20 Booker was only responsible to provide equipment and stay with the bearcat in case evacuation
21 was necessary, not to provide any rear security or to stop cars from traveling along Ellis Street.
22 ECF No. 41-14 at 15, 21-22, and 35.

1 Booker claims that when Murry turned onto Ellis Street, the bearcat's emergency lights
2 were on and that Murry stopped down the street and started to slowly creep forward toward
3 Booker's vehicle. *Id.* at 81-81 and 86. As Murry approached Booker's vehicle, Booker exited
4 and gave Murry hand signals to turn around and leave, and then yelled at Murry to stop his car,
5 but Murry continued to move forward. *Id.* at 87-92. Booker felt Murry posed a potential
6 physical threat to himself and the other officers, so he drew his weapon, and as Murry drove
7 closer he raised his weapon to the "low ready" position. *Id.* at 90-91. Booker testified that at that
8 point, he accidentally discharged his weapon, saw Murry reach down by his feet, and ordered
9 Murry to put his hands in the air. *Id.* at 107 and 117-118. Hearing Booker yell, two nearby
10 officers arrived at the scene, put Murry into custody, and searched Murry and his car. ECF No.
11 29-4 at 22-25 (Deposition of NLVPD Officer Robert Knickerbocker).

12 Murry disputes the defendants' version of these events. He testified that Booker did not
13 turn on the bearcat's emergency lights until Murry drove closer to Booker's position,¹ and that
14 when the lights came on, he stopped on the side of the road, rolled down his window to await
15 instructions, and waited for one or two minutes. ECF No. 41-10 at 49. He then proceeded
16 forward slowly. As his car came almost parallel with Booker's bearcat, Booker exited with his
17 weapon drawn, yelled "Hey," took a step towards Murry's car, and fired his weapon. *Id.* Murry
18 contends Booker never gave him verbal commands to turn his vehicle around. *Id.* at 80.²

20 ¹ Murry also offers the deposition testimony of Knickerbocker, who testified that the emergency
21 lights were not on just a few minutes prior to Booker discharging his weapon (ECF No. 41-11 at
22 13); and the statement of NLVPD Officer Kristen Bishop, who stated that "[t]here is no – the –
23 his, um red and blues were on" (ECF No. 41-12 at 4). But later in his deposition, Knickerbocker
testified that the lights were turned on before he walked away from the bearcat. ECF No. 41-11
at 16. And it is not clear whether Bishop's statement supports Murry's or the defendants'
position.

² Murry also points to statements from Knickerbocker (ECF No. 29-4 at 19), NLVPD Officer
Peter Nelson (ECF No. 41-16 at 7), and one of Murry's neighbors, Robbie Alvarez (ECF No. 41-

1 ii. *Booker Discharging His Weapon*

2 Booker testified that he discharged his firearm by accident. He alleges that he exited the
3 bearcat without his weapon drawn, but as Murry continued to move his car forward, he drew his
4 weapon and raised it to the low ready position. ECF No. 29-2 at 90-91. Because it was too dark
5 to see inside Murry's vehicle, Booker attempted to activate the tactical flashlight attached to his
6 weapon but accidentally pulled the trigger, discharging a single round into the front of Murry's
7 car, which continued through the engine compartment and into Murry's left foot. *Id.* at 107.

8 Murry claims Booker's explanation of events is contradictory. Lieutenant Brown stated
9 that Booker radioed in that he was able to see Murry in his car without the aid of his weapon's
10 tactical light. ECF No. 41-20 at 2-3. Knickerbocker testified that it was light enough that he was
11 able to see the shell casing from Booker's gun on the ground and could see Murry while Murry
12 was still in his car. ECF No. 41-11 at 24-25 and 37. Also, Booker did not claim that the shooting
13 was accidental until eight days after the incident, initially stating that he fired his weapon
14 because he felt endangered by Murry. ECF Nos. 41-5 at 21 (Booker's January 11, 2017
15 investigative interview); 41-14 at 25-26 (Brown's depositional testimony); 42 at 20 (NLVPD
16 Detective Mark Suranowitz's follow-up report).³

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19 15 at 2), all of whom state that they did not hear any commands before Booker discharged his
20 weapon. However, Alvarez states that he heard Booker shout something before discharging his
21 weapon. *Id.*

22 ³ "Sgt. Booker gave conflicting information about what occurred right after the shooting
23 compared to what he said during his interview eight days later." "The conflicting information
included Sgt. Booker initially stating the driver of the vehicle, Murry, had turned the steering
wheel of the vehicle toward him before Sgt. Booker fired his weapon. During the interview with
Sgt. Booker, he said the driver did not turn his steering wheel toward him. Sgt. Booker said
during the public safety statement that there was probable cause for the arrest of the driver of the
vehicle for assault with a deadly weapon with the vehicle being the weapon. There is no
evidence to support this charge."

1 iii. *Call for Medical Assistance and Alleged Arrest*

2 Relying on Knickerbocker's deposition testimony, the defendants contend that soon after
3 Booker discharged his weapon, several other SWAT officers responded to the scene, placed
4 Murry into custody, and searched Murry and his car. ECF No. 29-4 at 22-25. While
5 Knickerbocker was performing a safety pat down of Murry, he heard Murry say something about
6 his foot, noticed that Murry had been shot, and immediately called for medical assistance, which
7 arrived within five minutes. *Id.* at 35-39. Defendants claim that none of the other officers,
8 including Booker, was aware of Murry's injuries before Knickerbocker discovered them.
9 Although the defendants admit Booker saw Murry reach near his feet immediately after Booker
10 fired his weapon, they contend Booker believed Murry was potentially reaching for a weapon.
11 ECF No. 29-2 at 117-118. The defendants contend that Murry, although handcuffed, was never
12 under arrest during this time and that he was reminded of this multiple times by SWAT officers.
13 ECF No. 30-1. After officers accompanied him to the hospital, Murry gave a voluntary
14 statement and allowed Suranowitz to look through his phone. *Id.*

15 Murry testified that Booker intentionally shot him, saw him reach for his feet, and
16 therefore knew he was injured. ECF No. 41-10 at 66. But Booker did not call for medical
17 assistance and did not inform the other officers that he had fired his weapon. ECF No. 41-11 at
18 29.⁴ Murry testified that it took at least ten minutes for medical assistance to arrive, during
19 which time he was under arrest and handcuffed. ECF No. 41-10 at 66.⁵

21 ⁴ Knickerbocker testified at deposition that he never heard Booker say he fired a shot.

22 ⁵ Murry also submits two NLVPD Investigative Services follow-up reports which state that
23 NLVPD Lieutenant Ojeda asked Booker if there was a crime committed and if there was
probable cause to arrest, to which Booker responded in the affirmative. ECF Nos. 41-3 at 1 ("Q:
What crime was committed? A: Assault with a Deadly Weapon (AWDW). Q: Is there probable
cause to arrest? A: Yes."); 42 at 20.

1 **II. ANALYSIS**

2 Summary judgment is appropriate if the pleadings, discovery responses, and affidavits
3 demonstrate “there is no genuine dispute as to any material fact and the movant is entitled to
4 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is material if it “might affect the
5 outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
6 248 (1986). An issue is genuine if “the evidence is such that a reasonable jury could return a
7 verdict for the nonmoving party.” *Id.*

8 The party seeking summary judgment bears the initial burden of informing the court of
9 the basis for its motion and identifying those portions of the record that demonstrate the absence
10 of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. 323. The burden then shifts to the
11 non-moving party to set forth specific facts demonstrating there is a genuine issue of material
12 fact for trial. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th Cir. 2000). I view
13 the evidence and reasonable inferences in the light most favorable to the nonmoving party.
14 *James River Ins. Co. v. Hebert Schenk, P.C.*, 523 F.3d 915, 920 (9th Cir. 2008).

15 **A. Murry’s “Substantive Due Process” Claim (Claim 3)**

16 The defendants move for summary judgment on Murry’s claim for substantive due
17 process violations (Claim 3), arguing that a plaintiff cannot maintain a suit under both the Fourth
18 and the Fourteenth Amendments. ECF No. 29 at 19. Murry does not respond to this argument
19 except to generally state that “[t]here are triable issues of material fact regarding the excessive
20 force claim under the . . . substantive due process claims . . .” ECF No. 41 at 1.

21 “Where [an] excessive force claim arises in the context of an arrest or investigatory stop
22 of a free citizen, it is most properly characterized as one invoking the protections of the Fourth
23 Amendment, which guarantees citizens the right “to be secure in their persons . . . against

1 unreasonable . . . seizures” of the person.” *Graham v. Connor*, 490 U.S. 386, 394 (1989).

2 Consequently, “*all* claims that law enforcement officers have used excessive force—deadly or
3 not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be
4 analyzed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a
5 ‘substantive due process’ approach.” *Id.*

6 Murry’s claim for substantive due process relies only on factual assertions of
7 unreasonable search and seizure and excessive force, which are Fourth Amendment violations.
8 ECF No. 1 at 10-11. I therefore grant summary judgment to the defendants on Claim 4 because
9 the claim fails as a matter of law.

10 **B. Remaining Federal Claims Against Booker (Claims 1, 2, and 9)**

11 The defendants move for summary judgment on the remaining three federal claims
12 against Booker as an individual (Claims 1, 2, and 9), arguing that he is entitled to qualified
13 immunity. ECF No. 29 at 20-23. They argue that qualified immunity is warranted because
14 Booker’s conduct did not violate any “clearly established statutory or constitutional rights.”
15 *Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009). Specifically, they posit that the evidence
16 unequivocally shows that (1) Murry’s behavior leading up to Booker exiting the bearcat and
17 discharging his weapon gave Booker probable cause to conduct an investigatory stop, (2) Booker
18 accidentally discharged his weapon, and (3) Booker and the other officers provided Murry with
19 medical assistance immediately upon discovery of his injury. ECF No. 29 at 20-23.

20 Murry responds that there are issues of material fact regarding his behavior leading up to
21 the stop, whether Booker intentionally fired his gun, and the circumstances surrounding the
22 medical attention he received; therefore, qualified immunity is not warranted at this stage. ECF
23 No. 41 at 6- 8. Murry argues that there is evidence that (1) Booker did not have probable cause

1 to make the stop; (2) Booker used deadly force when he shot Murry, which was either intentional
2 or reckless; and (3) Booker was aware of Murry's injury but did not tell the other officers,
3 delayed the call for medical attention. *Id.*

4 I use "[t]he ordinary framework for deciding motions for summary judgment" when
5 evaluating "motions for summary judgment based on official immunity." *Moreno v. Baca*, 431
6 F.3d 633, 638 (9th Cir. 2005) (citations omitted). To determine whether Booker is entitled to
7 qualified immunity, I must "determine whether the facts show that (1) the officer's conduct
8 violated a constitutional right; and (2) the right which was violated was clearly established at the
9 time of the violation." *Espinosa v. City & Cty. of San Francisco*, 598 F.3d 528, 532 (9th Cir.
10 2010) (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). If a "genuine issue of material fact
11 exists that prevents a determination of qualified immunity at summary judgment, the case must
12 proceed to trial." *Serrano v. Francis*, 345 F.3d 1071, 1077 (9th Cir. 2003).

13 There are genuine issues of material fact regarding the circumstances leading up to
14 Booker stopping Murry and whether Booker intentionally fired his weapon at Murry. Both sides
15 offer evidence and expert opinions in support of their positions. *See* ECF No. 30-3 at 4 (Report
16 of W. Ken Katsaris), ECF No. 41-21 at 5-11 (Report of Roger Clark). Viewing the evidence in
17 the light most favorable to Murry, a reasonable jury could find that Booker seized Murry by
18 intentionally using deadly force without a reasonable basis and therefore violated Murry's clearly
19 established Fourth Amendment rights. *See Tennessee v. Garner*, 471 U.S. 1, 7 (1985) ("While it
20 is not always clear just when minimal police interference becomes a seizure, there can be no
21 question that apprehension by the use of deadly force is a seizure subject to the reasonableness
22 requirement of the Fourth Amendment. (citations omitted)); *Id.* at 11 ("Where the suspect poses
23 no immediate threat to the officer and no threat to others, the harm resulting from failing to

1 apprehend him does not justify the use of deadly force to do so.”). I therefore deny the
2 defendants’ motion for summary judgment on Murry’s claims for unreasonable search and
3 seizure (Claims 1) and excessive force (Claim 2).

4 There are also genuine issues of material fact regarding whether Booker failed to provide
5 immediate medical care for Murry’s injury. Murry points to evidence supporting the assertion
6 that Booker intentionally shot Murry, saw him reach for his feet, and therefore knew or should
7 have known that Murry was injured. While this evidence is not particularly strong, viewing it in
8 the light most favorable to Murry, a reasonable jury could find that Booker violated Murry’s
9 clearly established Fourteenth Amendment rights when he failed to tell the other officers that
10 Murry was injured, thus delaying Murry’s medical treatment and extending his pain. *See Lolli v.*
11 *Cty. of Orange*, 351 F.3d 410, 418–19 (9th Cir. 2003) (“Claims of failure to provide care for
12 serious medical needs, when brought by a detainee . . . who has been neither charged nor
13 convicted of a crime, are analyzed under the substantive due process clause of the
14 Fourteenth Amendment.” (citations omitted)); *Maddox v. City of Los Angeles*, 792 F.2d 1408,
15 1415 (“Due process requires that police officers seek the necessary medical attention for a
16 detainee when he or she has been injured while being apprehended by either promptly
17 summoning the necessary medical help or by taking the injured detainee to a hospital.”). I
18 therefore deny the defendants motion for summary judgment on Claim 9.

19 **C. State Law Claims (Claims 5, 6, and 8)**

20 The defendants move for summary judgment on the three state tort claims made against
21 Booker and NLVPD (Claims 5, 6, and 8), arguing that Booker is entitled to discretionary
22 immunity under Nevada Revised Statutes § 41.032, or, alternatively, that they are not liable for
23 the claims more generally. ECF No. 29 at 20-23. They posit that discretionary immunity is

1 warranted because Booker was performing a discretionary function when he stopped and
2 detained Murry and because his actions were not made in bad faith. They argue that “[a]n
3 officer’s decision as to how to accomplish a particular seizure or search is generally considered a
4 discretionary act under Nevada law,” including the use of lethal force. *Id.* at 24. Murry responds
5 that Booker’s decisions regarding the amount of force to use are not protected by Nevada’s
6 discretionary immunity statute, or, alternatively, that Booker was acting in bad faith. ECF No. 41
7 at 28-30.

8 [N]o action may be brought under NRS 41.031 or against . . . an officer or employee of
9 the State or any of its agencies or political subdivisions which is: based upon the exercise
10 or performance or the failure to exercise or perform a discretionary function or duty on
11 the part of the state or any of its agencies or political subdivisions or of any officer,
employee, or immune contractor of any of these, whether or not the discretion involved
was abused.

12 Nevada Revised Statutes § 41.032. “Police officers ‘exercise discretion and are thus generally
13 immune from suit where the act at issue required personal deliberation, decision, and
14 judgment,’” often including an officer’s decision “as to how to accomplish a particular seizure or
15 search.” *Sandoval v. Las Vegas Metro. Police Dep’t*, 756 F.3d 1154, 1168 (9th Cir. 2014)
16 (quoting *Davis v. City of Las Vegas*, 478 F.3d 1048, 1059 (9th Cir. 2007)). However, “where an
17 officer arrests a citizen in an abusive manner not as the result of the exercise of poor judgment as
18 to the force required to make an arrest, but instead . . . because of a willful or deliberate disregard
19 for the rights of a particular citizen or citizens, the officer’s actions are the result of bad faith and
20 he is not immune from suit.” *Id.* (quoting *Davis*, 478 F.3d 1060).

21 As with the federal claims made against Booker, there are numerous factual questions
22 surrounding the stop and seizure of Murry, such that a reasonable jury could find that Booker’s
23 actions and decisions were made in bad faith and are therefore not protected by discretionary

1 immunity. Viewing the evidence in the light most favorable to Murry, a reasonable jury could
2 find that Booker intentionally shot and detained Murry without justification and the defendants'
3 actions constituted false arrest, battery, and intentional infliction of emotional distress. I
4 therefore deny the defendants' motion for summary judgment on Claims 5, 6, and 8.

5 **D. Municipal Liability *Monell* Claim (Claim 4)**

6 Murry also brings a *Monell* claim against NLVPD for knowingly promulgating a policy,
7 practice, or custom that caused the constitutional violations against him. Murry argues that even
8 though the NLVPD's Deadly Force Review Board found Booker violated policy by using
9 excessive force,⁶ there was no investigation into whether Booker made commands to Murry and
10 Booker was not appropriately disciplined. He also claims that Justin Roberts, who oversaw the
11 Deadly Force Review Board presentation, was not aware that Murry was considered a suspect
12 when Murry was interviewed by Suranowitz.

13 The defendants move for summary judgment on the *Monell* claim, arguing that Murry
14 does not identify any specific NLVPD policies or practices. They also argue that Murry provides
15 no evidence that the allegedly poor investigation into Booker's actions was connected to or
16 indicative of any pre-incident policy that caused violations of Murry's rights. They also dispute
17 that the investigation was insufficient, and offer evidence that Booker was transferred from the
18 SWAT team and required to be retrained in the use of firearms. ECF Nos. 29-6 at 14; 29-2 at 21.

19 "To hold a police department liable for the actions of its officers, the [plaintiff] must
20 demonstrate a constitutional deprivation, and show that the deprivation was visited pursuant to a
21 police department custom or policy." *Munger v. City of Glasgow Police Dep't*, 227 F.3d 1082,

23 ⁶ Murry refers to a report by NLVPD's Deadly Force Review Board, but did not attach it to
opposition.

1 1087 (9th Cir. 2000) (citing *Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 690–91 (1978)). To
2 meet this standard, a plaintiff can show that the specific policy or practice at issue is
3 unconstitutional. “But where the policy relied upon is not itself unconstitutional, considerably
4 more proof than the single incident will be necessary in every case to establish both the requisite
5 fault on the part of the municipality, and the causal connection between the ‘policy’ and the
6 constitutional deprivation.” *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 824 (1985).
7 Murry’s evidence in support of his *Monell* claim relates only to the investigation of Booker’s
8 actions. He presents no evidence of a more widespread policy or how that policy resulted in the
9 violations he is claiming, other than to nakedly argue that they are connected. Based on that, no
10 reasonable jury could find for Murry on his *Monell* claim. I therefore grant summary judgment
11 to the defendants on Claim 4.

12 **E. Punitive Damages**

13 The defendants move to dismiss Murry’s demand for punitive damages, arguing that
14 there is insufficient evidence that Booker or NLVPD acted with “evil motive or intent, or [with]
15 a reckless or callous indifference to the constitutional rights of others.” ECF No. 29 at 27-29
16 (quoting *Dang v. Cross*, 422 F.3d 800, 807 (9th Cir. 2005)).

17 There are genuine issues of material fact regarding Booker’s motive, justification, and
18 intentions in shooting Booker, and whether he knew that Murry was injured but failed to inform
19 the other officers. Viewing the evidence in the light most favorable to Murry, a reasonable jury
20 may find that his actions warrant the imposition of punitive damages. I therefore deny the
21 defendants’ motion for summary judgment on Murry’s demand for punitive damages.

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1 **III. MURRY'S OBJECTION TO EVIDENCE**

2 Murry objects to a newspaper article concerning accidental shootings deaths that the
3 defendants included as an exhibit to their reply. ECF No. 50-1. Murry argues that the article is
4 inadmissible hearsay according to Federal Rule of Evidence 802. The article did not influence
5 my decision regarding the defendants' motion, so I overrule Murry's objection as moot.

6 **IV. CONCLUSION**

7 IT IS THEREFORE ORDERED that the defendants' motion for summary judgment
8 **(ECF No. 29) is GRANTED** as to Claims 3 (Substantive Due Process) and 4 (*Monell* liability),
9 **DENIED** as to all other claims, and **DENIED** as to the plaintiff's request for punitive damages.
10 Claims 3 and 4 are dismissed with prejudice.

11 IT IS FURTHER ORDERED that the plaintiff's objection to evidence **(ECF No. 53) is**
12 **OVERRULED.**

13 DATED this 30th day of March, 2019.



14 ANDREW P. GORDON
15 UNITED STATES DISTRICT JUDGE
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